

BEFORE THE
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
JUDGE LINDA D. SCHOONOVER

CASE NO.: SC-14-1647

**SPECIAL COUNSEL'S MOTION FOR ORDER TO SHOW CAUSE WHY
JUDGE SCHOONOVER SHOULD NOT BE PROHIBITED FROM CALLING
WITNESSES AND INTRODUCING EXHIBITS AT FINAL HEARING**

Judge Schoonover ignored the Hearing Panel Chair's April 20, 2015 Order Scheduling Final Hearing and Other Deadlines by not providing her witness and exhibit lists by May 15, 2015. This is another example of bizarre and inexplicable behavior, including failure to comply with deadlines. Special Counsel requests that the Hearing Panel Chair issue an order to show cause why Judge Schoonover should not be prohibited from calling witnesses and introducing exhibits at final hearing.

1. The April 20, 2015 Order Scheduling Final Hearing and Other Deadlines directs that, "[T]he parties shall exchange witness and exhibit lists no later than May 15, 2015. The subject matter of the testimony of each witness must be listed."

2. On May 15, 2015, Special Counsel complied with the Panel Chair's Order by serving on Judge Schoonover's counsel: (a) Special Counsel's Third Updated Exhibit List for Final Hearing and (b) Special Counsel's Third Updated Disclosure of Witness Summaries.

3. Judge Schoonover and her counsel did not serve either a witness or exhibit

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list by May 15, 2015.

4. For more context, it is helpful for Special Counsel to recount the previous disclosures. Special Counsel has listed 40 witnesses for final hearing. Special Counsel notified Judge Schoonover of 33 of these witnesses through Special Counsel's Response to Judge Schoonover's Demand Pursuant to Rule 12(c), on October 24, 2014. Special Counsel then served his Second through Fifth Supplemental Responses to Judge Schoonover's Demand Pursuant to Rule 12(c), disclosing the additional seven witnesses, on November 20, 2014, December 12, 2014, March 24, 2015, and April 28, 2015.

5. In addition to providing the names and addresses through those responses to Judge Schoonover's Demand Pursuant to Rule 12(c), Special Counsel also served his Disclosure of Witness Summaries (November 20, 2014), First Updated Disclosure of Witness Summaries (March 6, 2015), Second Updated Disclosure of Witness Summaries (March 24, 2015), and Third Updated Disclosure of Witness Summaries (May 15, 2015). These witness summaries notify Judge Schoonover of the general areas of knowledge of the witnesses.

6. Thus, Judge Schoonover had the information about most of the trial witnesses since 2014, and has received timely updates of additional witnesses. This has given her ample time to prepare her defense and determine what witnesses she will call.

7. On December 12, 2014, Special Counsel served Special Counsel's Exhibit List for Final Hearing, together with the exhibits themselves. Special Counsel served

updated exhibit lists, with the exhibits, on March 3, 2015, March 24, 2015, and May 15, 2015.

8. Thus, again, Judge Schoonover was aware of most of the final hearing exhibits since December, 2014, and has received periodic additions to the exhibit list. She has had ample time to determine what exhibits she intends to use at final hearing.

9. Judge Schoonover did provide Respondent's Witness List on October 30, 2014, listing 92 potential witnesses. As of the current date, Judge Schoonover has not provided the addresses of six of those witnesses. Also, Judge Schoonover's previous counsel did provide an address for Beth Painter, her former judicial assistant, who Special Counsel believes that Judge Schoonover intends to call as a witness. However, a process server notified Special Counsel that the address for Ms. Painter is no longer valid, and that potential witness does not respond to messages Special Counsel has left for her at the phone number provided by Judge Schoonover's former counsel.

10. On November 20, 2014, Judge Schoonover's previous counsel sent Special Counsel a document without a caption which lists 94 (not 92) names, apparently of potential witnesses Judge Schoonover may call at trial. This document gives short summaries regarding the knowledge of 77 witnesses. There are no summaries for 15 of these names.

11. Judge Schoonover has never provided any form of exhibit list.

12. Judge Schoonover's refusal to provide her actual witness and exhibit lists on

May 15, 2015 is another example of her attempts to prevent this case from proceeding to a final hearing. The problem caused by her not providing her witness and exhibit lists is obvious: Special Counsel cannot appropriately prepare. Indeed, once Special Counsel determines the actual witnesses and exhibits Judge Schoonover intends to use at trial, that might require Special Counsel to list its own additional witnesses and exhibits.

13. Judge Schoonover's decision to ignore the Order Scheduling Final Hearing and Other Deadlines means that she, a sitting Circuit Judge, chooses to ignore the Hearing Panel Chair's lawful authority. This is reminiscent of the Hearing Panel Chair's comments to Judge Schoonover's current counsel at the April 15, 2015 status conference:

"It is important that Mr. Millard understands that he is at least the third lawyer who has made all the promises that he has made here today. It is important that he understands that, so he doesn't think that we are being harsh or unfair. It is just that we have heard all of this before and really nothing has happened, so there is a concern about that.

Very little has been done. There have been efforts to get it done, but all those efforts have been met with resistance. So that is of grave concern to me. We are supposed to expedite the resolution of these types of cases. This case is a textbook of a case that has not been expedited through no fault of Special Counsel and certainly not me. I have tried very hard to get this for a full and fair hearing. We can't seem to get there. So everything else, all other orders remain at full force and effect."

13. Special Counsel moves for issuance of an order to show cause why Judge Schoonover should not be prohibited from calling witnesses and introducing exhibits at final hearing.

Respectfully submitted,

JUDICIAL QUALIFICATIONS COMMISSION

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail to Scott G. Millard, attorney for The Honorable Linda D. Schoonover, smillard@cohenbattisti.com; erinlawrence@cohenbattisti.com, The Honorable Robert Morris, Florida Judicial Qualifications Commission Hearing Panel Chair, morrisr@flcourts.org, Michael Schneider, General Counsel to the Judicial Qualifications Commission, mschneider@floridajqc.com, and Lauri Waldman Ross, Counsel to the Hearing Panel of the Florida Judicial Qualifications Commission, rossgirten@laurilaw.com, this 18th day of May, 2015.

/s/ Oliver David Barksdale

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